

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MELINDA MEDINA,

Plaintiff,

- against -

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

17 Civ. 10099 (ER) (DCF)

RAMOS, D.J.:

Melinda Medina commenced this action against the Commissioner of Social Security (the “Commissioner”) pursuant to 42 U.S.C. § 405(g), seeking review of the denial of her claim for benefits under Titles II and XVI of the Social Security Act. Doc.

1. On December 28, 2017, the Court referred the case to Magistrate Judge Debra C. Freeman. Doc. 6. On September 4, 2018, the Court entered the parties’ proposed stipulation reversing the decision of the Commissioner and remanding the matter to the Social Security Administration for further administrative proceedings. Doc. 18. On November 28, 2018, the Court entered the parties’ additional stipulation that Medina be awarded attorney’s fees under the Equal Access to Justice Act in the amount of \$4,800. Doc. 21. Following the remand, Medina received retroactive benefits from the Social Security Administration. Doc. 24 ¶ 5.

On May 8, 2020, Medina filed a motion for attorney’s fees pursuant to 42 U.S.C. § 406(b), seeking an award of \$23,547.25 in fees, representing 25 percent of the benefits awarded retroactively to Medina. Docs. 22 and 24 ¶ 10. On June 1, 2020, the Commissioner submitted a letter to the Court, indicating that the Social Security Administration did not object to the motion. Doc. 26. On May 13, 2021, Magistrate Judge Freeman issued the Report and Recommendation (“R&R”), recommending that Medina’s motion be granted, that Medina be awarded \$23,547.25 in attorney’s fees, and

that Medina’s counsel be ordered to refund promptly to Medina the \$4,800 in attorney’s fees previously awarded on November 28, 2018. Doc. 28. Magistrate Judge Freeman also notified the parties that they had fourteen days from service of the R&R to file written objections. *Id.* No objection to the R&R has been filed.

I. STANDARD OF REVIEW

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise “specific,” “written” objections to the report and recommendation “[w]ithin fourteen days after being served with a copy.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008). The district court will also review the report and recommendation for clear error where a party’s objections are “merely perfunctory responses” argued in an attempt to “engage the district court in a rehashing of the same arguments set forth in the original petition.” *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) (citations and internal quotation marks omitted).

II. DISCUSSION

The Commissioner has filed no objection, and the Court has reviewed Magistrate Judge Freeman's thorough and well-reasoned R&R and finds no error, clear or otherwise. The Court therefore adopts Magistrate Judge Freeman's recommendations in their entirety. Accordingly, Medina's motion for attorney's fees is GRANTED, Medina is awarded \$23,547.25 in attorney's fees, and Medina's counsel is ordered to refund promptly to Medina the \$4,800 in attorney's fees previously awarded on November 28, 2018. The Clerk of Court is respectfully directed to terminate the motion. Doc. 22.

It is SO ORDERED.

Dated: August 5, 2021
New York, New York



EDGARDO RAMOS, U.S.D.J.